

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

1 BAYER AG, et al.,

2 Plaintiffs

3 v.

4 BIOVAIL LABORATORIES, INC.,  
5 et al.,

6 Defendants.  
7  
8

CIVIL NO. 98-1282 (RLA)

CIVIL NO. 98-1340 (RLA)

CIVIL NO. 98-1494 (RLA)

CIVIL NO. 98-1768 (RLA)

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9 SEVENTH OMNIBUS ORDER

10 The following matters pending in this action are hereby  
11 disposed of as set forth below.

12 ORDER FOR PLAINTIFFS TO SHOW CAUSE

13 The Court having reviewed the opinion issued in Bayer AG and  
14 Bayer Corp. v. Elan Pharmaceutical Research Corp. and Elan Corp.  
15 PLC, No. 99-1365 (Fed. Cir. May 12, 2000) submitted by plaintiffs  
16 herein<sup>1</sup> hereby ORDERS as follows.

17 Plaintiffs shall show cause, **no later than June 1, 2000** why the  
18 findings in the aforementioned opinion regarding: (1) literal  
19 infringement and (2) infringement under the doctrine of equivalents  
20 should not be determinative of the analogous claims asserted in this  
21 litigation.  
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23  
24  
25 <sup>1</sup> See Informative Motion, filed on May 15, 2000 (docket No.  
26 122).

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Defendants shall respond thereto on or before June 19, 2000.

A reply, if warranted, shall be filed on or before June 30, 2000 and a sur-reply, if any, by July 10, 2000.

#### OUTSTANDING DISCOVERY

It appearing that most, if not all, of the outstanding discovery disputes result from the parties' differing views regarding the appropriate claim construction in these proceedings<sup>2</sup> and given the possibility that this issue may be disposed of by preclusion principles, the discovery-related motions will be held in **ABEYANCE** pending resolution of the effect of the Elan litigation in these consolidated actions.

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<sup>2</sup> Whether the SSA range literally recited in the '446 claims - e.g., 1.0 through 4 m<sup>2</sup>/g - applies to the nifedipine crystals as they exist within the "solid pharmaceutical composition", or whether the SSA limitation applies only to the starting nifedipine raw material **before** it is "granulated", mixed with pharmaceutically inactive ingredients, and compressed into the finished drug product, e.g., the tablet.

Bayer and Pfizer's Motion for Claim Construction ("Markman") Hearing, filed on March 9, 2000 (docket No. 97) at 4 (emphasis in original).

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MISCELLANEOUS

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TITLE & MOVING PARTY	FILING DATE/ DOCKET NO.	DISPOSITION
Motion to Place under Seal Motion Entitled "Bayer AG's, Bayer Corporation and Pfizer Inc.'s Motion to Compel Expert Report or to Exclude any Expert Testimony of Paul Maes"	3/6/2000 # 92	Leave to file <u>under</u> <u>seal</u> is GRANTED.
<b>Filed by:</b> BAYER AG and BAYER CORP. and PFIZER INC.		
Bayer AG's, Bayer Corporation and Pfizer Inc.'s Motion to Compel Expert Report or to Exclude any Expert Testimony of Paul Maes	3/6/2000 # 93	WITHDRAWN.
<b>Filed by:</b> BAYER AG and BAYER CORP. and PFIZER INC.		
Motion to Withdraw Plaintiffs' Motion to Compel Expert Report or to Exclude any Expert Testimony of Paul Maes Motion	3/17/2000 # 104	GRANTED.
<b>Filed by:</b> BAYER AG and BAYER CORP. and PFIZER INC.		

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TITLE & MOVING PARTY	FILING DATE/ DOCKET NO.	DISPOSITION
Joint Status Report	3/13/2000	NOTED.
Filed by: Joint	# 100	
Stipulated Extension of the Discovery Schedule	3/23/2000	GRANTED.
Filed by: Joint	# 105	

IT IS SO ORDERED.

San Juan, Puerto Rico, this 16<sup>th</sup> day of May, 2000.



RAYMOND L. ACOSTA  
 United States District Judge